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# Proposed Policy and Procedures for Differing Professional Opinions

For Comment

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Office of Management and Program Analysis  
U. S. Nuclear Regulatory Commission



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Manuscript Completed: September 1979  
Date Published: October 1979

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## NRC POLICY ON DIFFERING PROFESSIONAL OPINIONS

It is the policy of the Nuclear Regulatory Commission, and the responsibility of all NRC supervisory and managerial personnel, to maintain a working environment that encourages employees to make known their best professional judgments even though they may differ from a prevailing staff view, disagree with a management decision or policy position, or take issue with established agency practices. Each differing professional opinion of an NRC employee will be evaluated on its own merit. Further, each differing professional opinion will be pursued to resolution and the employee's statement of differing professional opinion, together with the agency's final response, will be made available to the public to ensure the openness of NRC decisions that may affect the public.

It is not only the right but the duty of all NRC employees to make known their best professional judgments on any matter relating to the mission of the agency. Moreover, both the general public and the Nuclear Regulatory Commission benefit when the agency seriously considers differing professional opinions held by NRC employees that concern matters related to the agency's mission. This policy assures all employees the opportunity to express differing professional opinions in good faith, to have these opinions heard and considered by NRC management, and to be protected against retaliation in any form.

Individual NRC offices may develop procedures to meet their specific needs. Office procedures must be consistent with agency policy and procedures.

## NRC PROCEDURES FOR DIFFERING PROFESSIONAL OPINIONS

### A. SCOPE

These procedures for the expression and resolution of differing professional opinions are for the use of all NRC employees. They supplement other stated rights, duties, and safeguards applicable to all Federal employees who make their views known either within or outside their agencies, including:

- the independent right of free speech provided by the First Amendment to the U. S. Constitution;
- the right of government employees to petition the Congress (5 USC 7102);
- the rights of employees to communicate directly with the Congress as outlined in the Code of Ethics for Government Service (10 CFR 0.735 Annex A); and

- provisions of the 1978 Civil Service Reform Act dealing with prohibited personnel practices and the regulations of the Merit System Protection Board.

B. OBJECTIVES

The objectives of NRC's procedures are to:

1. define differing professional opinions;
2. distinguish between differing professional opinions and the difference of views and opinions routinely raised and resolved among staff members in the ordinary conduct of agency business;
3. provide a primary channel for submitting differing professional opinions;
4. specify the recommended content of a statement of differing professional opinions;
5. provide reasonable time and reasonable administrative assistance to help employees develop and document their differing professional opinions;
6. provide alternative channels for expressing a differing professional opinion either on the record or anonymously;
7. provide for acknowledgement of receipt of statements of differing professional opinion and for advising originators of planned actions for resolution;
8. provide accountability by requiring a written record of all actions taken on differing professional opinions;
9. provide for resolution within the agency of differing professional opinions, if at all possible;
10. provide disciplinary sanctions against employees who take retaliatory actions that affect the originators of differing professional opinions;
11. prevent intentional misuse of these procedures;
12. provide for periodic assessment to ensure that implementation of these procedures accomplishes the stated objectives and to recommend appropriate changes; and
13. provide recognition to the originators of differing professional opinions if their opinions contribute significantly to achievement of the agency's mission.



## C. PROCEDURES

### 1. Definition of Differing Professional Opinion

A differing professional opinion is a conscientious expression of professional judgment on any matter relating to NRC's mission or organizational activities that differs from the prevailing staff view within an organization, disagrees with a management decision or policy position, or takes issue with an established agency practice.

Differing professional opinions are not limited to the originator's area of expertise: they may involve technical, management, or policy issues. For the purpose of these procedures, matters that are subject to employee grievance in accordance with NRC Manual Chapter 4157 do not qualify as differing professional opinions.

### 2. Normal Differing Views vs. Differing Professional Opinions

A normal differing view, developed in the free and open discussion of work matters, becomes a differing professional opinion only when the originator brings it to NRC management attention in accordance with these procedures.

In the free and open discussion of work matters, professional differences of opinion are common. Employees may also develop critical views concerning matters other than their personal work assignments, such as issues under consideration in another part of NRC or relating to an agency practice or position that is neither currently under review nor in the agency's decision-making process.

In both these instances, employees normally try and should be encouraged to resolve their concerns through discussions with their co-workers and immediate supervisors. In some cases, this may lead to a suggestion as part of the NRC suggestions program (NRC Manual Chapter 4154).

However, these informal discussions may not resolve the matter and an employee may be convinced that the agency and the public would be better served if another opinion prevailed. To further pursue such concerns, an employee should submit a signed, written statement of differing professional opinion in accordance with these procedures. With the submission of this written statement, the employee's differing view becomes a differing professional opinion.

An employee may not use these procedures for differing professional opinions without submitting a written statement. He may, however, express his concerns orally or in writing to the ACRS and may also discuss these concerns with any NRC manager as provided in the

Open Door Policy. (See Procedure No. 6.) A manager is an employee who directs the work of an organization, is held accountable for the success of specific line or staff programs or activities, and whose primary duties are managerial.

3. Primary Channel for Expressing Differing Professional Opinions

These procedures are invoked when an employee submits to his immediate supervisor a signed statement of differing professional opinion. As indicated in the statement of policy, it is not only the right but the duty of all NRC employees to make known their best professional judgments on any matter relating to the mission of the agency.

Before submitting the statement, employees should consult with their immediate supervisors who will aid them in identifying related information and assist them, if requested, in clarifying the issues. The originator of the differing professional opinion may request agency resources for preparing an adequate written statement of differing professional opinion and such a request will include an estimate of the resources required.

4. Content of a Written Statement of Differing Professional Opinion

Regardless of its format or style, a written statement of differing professional opinion should be as brief as possible. It is strongly recommended that the statement include:

- a. a summary of the originator's perception of the prevailing staff view, existing management decision or stated positions, or the established agency practice;
- b. a description of the originator's opinions and how they differ from any items discussed in a. above;
- c. a statement of the originator's assessment of the resulting consequences if the differing professional opinion is not adopted by the agency; and
- d. the status of related efforts with which the originator is familiar and their potential contribution toward resolution of the originator's differing opinion.

5. Resources to Assist Originators of Differing Professional Opinions

To assist originators in preparing adequate written statements of differing professional opinion, NRC management may allow a reasonable amount of (a) the originator's work time, (b) time of other NRC

professional personnel in a consulting capacity, and (c) administrative support. The originator's immediate supervisor, in consultation with his or her manager, will determine the nature and level of resources provided in response to the originator's request for assistance.

The purpose of this assistance is to ensure that the pertinent issues are clearly and accurately presented, that related matters are considered, and that any relevant documentation is included. In determining the level of resources to be made available to the employee, consideration will be given to (a) the potential significance of the proposed differing professional opinion, and (b) the urgency of resolving the differing professional opinion in comparison with other mission-related activities.

As an alternative, employees may prepare a statement of differing professional opinion on their own time and in that statement describe what work, including proposed commitments of their own time, would be needed to resolve the concerns or issues.

6. Alternate Channels for Expressing Differing Professional Opinions

Two alternate channels are available for employees who prefer not to use the primary channel for expressing their differing professional opinions (employees may also bring their concerns to the Office of Inspector and Auditor):

a. Open Door Policy

The Open Door Policy of NRC provides that NRC employees may, on their own initiative, meet with any manager, including a Commissioner or the Chairman of NRC, to discuss any matter of concern to the employee. Upon request, the employee's identity will be kept anonymous.

If discussions disclose that an employee's views constitute a differing professional opinion, the contacted manager should encourage the employee to submit a signed, written statement of differing professional opinion in accordance with these procedures. If the employee insists on remaining anonymous, but wishes to have his or her views considered as a differing professional opinion, the employee must submit an unsigned statement of differing professional opinion to the manager contacted via the open door and that manager will forward the anonymous statement of differing professional opinion to the office director having programmatic responsibility for the issues raised in the differing professional opinion. Resolution of the differing professional opinion will then be completed in accordance with these procedures. To protect an employee's anonymity in such cases, however, acknowledgement of receipt

of the differing professional opinion required by Procedure No. 7 will not be possible, nor will originators be provided with reports on resolution required by Procedure No. 9-b. However, acknowledgements will be made to the manager contacted and proper reports will be provided.

Differing opinions not expressed in writing shall be considered normal differing views, as discussed in Procedure No. 2, and may not be further pursued using these procedures.

Open Door discussions between employees and managers may also relate to subjects other than normal differing views and differing professional opinions. In these cases, managers will work to resolve an employee's concerns, to answer any questions, and to honor any request for anonymity. However, honoring a request for anonymity may limit a manager's assistance to either discussions with the employee or to providing advice and counsel on matters of concern to the employee. Managers should advise employees of the proper channels to be used for the resolution of concerns that may not be resolved using these procedures for differing professional opinions. If the contacted manager believes that others should be notified of issues raised in these discussions, he should notify offices with programmatic responsibility, the Office of Inspector and Auditor, and others, as appropriate. Resolution of these matters does not involve use of procedures for differing professional opinions.

b. The ACRS

If the differing professional opinion relates to a potential safety issue within the purview of the Advisory Committee on Reactor Safeguards, an NRC employee may communicate orally or in writing directly with the Chairman or any member of the ACRS. Such communication may be anonymous. The ACRS will append comments, as appropriate, to all written statements of differing professional opinion and will forward these statements for resolution to the appropriate NRC office director.

An NRC employee may also appear before the ACRS to present oral or written statements for consideration by the Committee. The ACRS will assure that all such statements that do not constitute a differing professional opinion are forwarded to the appropriate NRC office director for information.

7. Acknowledgement of Differing Professional Opinions

The immediate supervisor, upon receiving a written statement of differing professional opinion, should discuss the statement with

the originator if this has not previously been done. In addition, the immediate supervisor must, within one calendar week, acknowledge receipt by a memorandum to the originator. This memorandum will also indicate the actions that will be taken to resolve the differing professional opinion.

If the immediate supervisor determines that the written statement deals with matters excluded from the definition of a differing professional opinion, he shall note this in his memorandum -- citing the specific exclusion -- and return the statement to the employee. The memorandum will indicate that no further action will be taken using differing professional opinion procedures and will inform the employee of the appropriate procedures for dealing with his concerns. An employee may appeal to the next higher level of supervision an immediate supervisor's decision that his written statement deals with matters that may not be resolved using the procedures for differing professional opinion.

Upon receipt, statements of differing professional opinion will be incorporated into the receiving organization's normal work tracking system. This tracking should assure that the status of each differing professional opinion is regularly reviewed, aid in its prompt resolution, and provide a systematic basis for keeping the originator informed.

8. Written Record of Actions on Differing Professional Opinions

Once a signed differing professional opinion has been submitted, a written record must be maintained to provide accountability for all subsequent actions taken to resolve that differing professional opinion on its merits. This record will consist of signed notations of all supervisory and managerial determinations and actions based upon the differing professional opinion. All pertinent documentation must be preserved. Changes in the original documentation that are requested by the originator will also be made a part of this written record. To the extent necessary, these procedures should permit anonymity to the extent requested by the originator.

9. Resolution of Differing Professional Opinions

a. Definition of Resolution

A differing professional opinion is considered resolved by the NRC when:

- (1) NRC management adopts the views expressed in the originator's written statement of differing professional opinion, or

- (2) NRC management adopts a part of the judgments expressed in the originator's written statement of differing professional opinion and informs the originator of the reasons for not adopting the remainder, or
- (3) The responsible office director determines that evaluation of the differing professional opinion fails to justify modification of a management decision, policy position, or an existing agency practice, or
- (4) The responsible office director determines that the impact of the potential consequences stated in the differing professional opinion is insufficient to justify a detailed evaluation of the differing professional opinion.

In each of the preceding cases, resolution occurs only when the originator has been informed of the decision or action of NRC management and, consistent with security classification policy, both the statement of differing professional opinion and the response of NRC management have been placed in NRC's Public Document Room. Resolution of a differing professional opinion by NRC management in accordance with these procedures may not be appealed within the agency. However, an originator who is dissatisfied with a management resolution may express his concerns via either the Open Door or the ACRS.

b. Resolution Process

Upon receiving a statement of differing professional opinion from the originator, the immediate supervisor will forward it to his or her office director for action. The immediate supervisor and others in the chain-of-command may append their views concerning matters discussed in the differing professional opinion. The office director will forward the differing professional opinion within 10 working days of its submission either to the appropriate manager within his own office or to the director of another responsible office. If transferred to another office for resolution, the differing professional opinion must be assigned to the responsible program manager within 14 working days after its submission by the originator.

The responsible Office Director will, within 14 working days after its submission by an originator, inform the boards of any differing professional opinion that relates to issues pending before them or scheduled for their consideration.

The responsible manager will incorporate the statement of differing professional opinion into the organization's normal work tracking system and, until the differing professional opinion has been resolved, shall provide the originator with brief monthly status reports. Copies of these reports should also be provided to the responsible Office Director. The responsible manager will also inform the originator if other differing professional opinions are received that conflict with that submitted by the originator. The responsible office director will notify the originator of final resolution of the differing professional opinion and shall provide him with a copy of the record that will be placed in NRC's Public Document Room.

c. Reports to the Commission

The Office of Management and Program Analysis (MPA) shall provide the Commission with quarterly reports identifying all Differing Professional Opinions submitted and specifying the actions that have been taken to achieve their resolution.

This information shall be provided by the responsible Office Directors who shall, within five working days after each calendar quarter, provide MPA with a Differing Professional Opinion Status Report that contains a listing and description of all Differing Professional Opinions received together with a brief status report of all efforts that have been taken to achieve their resolution. Items shall be reported and summarized in the following three categories:

- 1 - Differing Professional Opinions submitted since submission of the last quarterly status report.
- 2 - Differing Professional Opinions previously identified but not yet resolved.
- 3 - Differing Professional Opinions previously identified that were resolved on (date).

10. Prevention of Retaliation Against Individuals Who Express Differing Professional Opinions

Any NRC employee who retaliates against another employee for submitting a differing professional opinion is subject to disciplinary action in accordance with NRC Manual Chapter 4171 (Separations and Adverse Actions). This applies to retaliatory actions described in a. below and to all prohibited personnel practices specified in Section 2302, Title 5, U.S. Code, as amended by the Civil Service Reform Act of 1978.

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